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No. 649

# In the Supreme Court of the United States

OCTOBER TERM 1935

R. C. TWAY COAL COMPANY ET AL., PETITIONERS

*v.*

SELDEN R. GLENN, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF KENTUCKY, RESPONDENT

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE RESPONDENT



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## BRIEF FOR THE RESPONDENT

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### THE RELATIONSHIP BETWEEN THIS CASE AND NO. 650, CLARK v. R. C. TWAY COAL COMPANY

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This case, No. 649, is a suit by certain coal mining companies against the Collector of Internal Revenue for the District of Kentucky to prevent the collection of the tax imposed by the Bituminous Coal Conservation Act of 1935. No. 650, *Clark* v. *Tway Coal Company,* is a stockholder's suit against one of the petitioners in No. 649 to compel it to accept the Bituminous Coal Code promulgated un-

der the said Act on the ground that the Act is constitutional. No officer of the Government is a party to the latter suit, but the Government was invited below to appear as *amicus curiae* to defend the constitutionality of the Act. The substantive issues in No. 650 are precisely the same as in Nos. 649 and 636, and the Record is substantially the same as in No. 649. The opinion of the Court below applied both to Nos. 649 and 650. Under these circumstances, it does not seem necessary for the Government to enter an appearance as *amicus curiae* in No. 650. It is respectfully requested that the briefs and argument for the Government in Nos. 636 and 649 be regarded as equivalent to an appearance as *amicus curiae* in No. 650.

### OPINION BELOW

The opinion of the United States District Court for the Western District of Kentucky is reported in 12 Fed. Supp. 570 (R. 38–80).[1]

### JURISDICTION

The decree of the District Court was entered November 14, 1935 (R. 85–87). Appeal to the United States Circuit Court of Appeals for the Sixth Circuit was allowed November 23, 1935 (R.

[1] The opinion was applicable to this case, to *Clark* v. *Tway Coal Company* (No. 650) and to the case of *Baltimore Trust Company* v. *Norton Coal Mining Company*, a request by receivers of the Norton Coal Mining Company for instructions as to whether or not to accept the Bituminous Coal Code. The third case has not been appealed.

222–223), and the transcript of record filed in that court on December 11, 1935. Petition for a writ of certiorari was filed in this Court before the case was heard or submitted in the Court of Appeals. Certiorari was granted December 23, 1935. Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

The issues in this case are the same as those presented in No. 636, *Carter* v. *Carter Coal Company*. (See pages 2–3 of the Government's brief in No. 636.) The main questions presented relate to the validity of the provisions of the Bituminous Coal Conservation Act under the commerce and due process clauses of the Constitution.

## STATUTE INVOLVED

The Bituminous Coal Conservation Act of 1935 is set forth in the appendix to petitioners' brief (pp. 73–108) and in the Government's brief in No. 636 (pp. 289–325). The Act is summarized in the latter brief (pp. 3–10).

## STATEMENT

This suit was brought by a number of companies operating bituminous coal mines in Harlan County, Kentucky, to enjoin the collection of the taxes imposed by the Bituminous Coal Conservation Act. The action was filed on September 10, 1935. Peti-

tioners alleged that they did not desire or intend to accept the Bituminous Coal Code to be promulgated under the Act, and that the tax imposed by the said Act was a penalty for the enforcement of regulatory provisions alleged to be unconstitutional.

The bill contained detailed allegations of irreparable and extraordinary damage in order to support petitioners' contention that they are entitled to injunctive relief if the Act is unconstitutional. The sufficiency of these allegations or of the proof offered in support of them is not challenged by the Government.

In an amendment to the bill (R. 26–28) petitioners alleged that the greater part of the coal produced by them was sold to customers in other states, but that a substantial part was sold to customers in the State of Kentucky; that 4 per cent of the production in the Harlan County field and in the State of Kentucky was sold within the State of Kentucky; that 44 per cent of the coal produced in Ohio, 38 per cent of the coal produced in Pennsylvania, 4 per cent of the coal produced in West Virginia, and 14 per cent of the coal produced in the United States was sold to purchasers within the State in which the coal was produced. It was further alleged that substantially all of the men employed by each of the petitioners in connection with their mining operations are employed in the production of coal and have no duties to perform in connection with the sale of the coal after it is mined.

In its answer (R. 16–23) the respondent put the petitioners to their proof on other than formal matters, denied the allegations of unconstitutionality, and as a separate defense set up facts showing that the regulations imposed by the Act are regulations of transactions in interstate commerce or directly affecting interstate commerce.

## THE EVIDENCE

The statement of evidence consists of a narration of oral testimony taken on the right of petitioners to equitable relief and of written statements submitted, by stipulation, by both parties. The petitioners introduced evidence (R. 89–121) to prove the existence of such extraordinary and unusual circumstances as to warrant the granting of equitable relief despite the provisions of Section 3224 of the Revised Statutes, and to show the percentage of the sales of each of the petitioners made within the State of Kentucky. The Government offered statements and exhibits in order to show that the provisions of the Bituminous Coal Conservation Act were both reasonably related to the regulation of interstate commerce and reasonable under the due process clause (R. 122). Upon objection by the petitioners on the ground that the contents of such statements were irrelevant the court excluded these statements and exhibits from evidence, but permitted them to stand in the Record as the avowal of the defendant as to the evidence of each

of said witnesses (R. 123–215).[2] The court on its own motion excluded the evidence of Roy Carson (R. 121), offered by petitioners on the same subject, but permitted it to stand in the Record on the same terms.[2]

The statements and exhibits excluded by the court contained in substance much of the same testimony as that given by the witnesses for the Government at greater length and in more detail in the *Carter* case in No. 636, and narrated in that Record (R. 283–545). Seven of the Government's eight witnesses[3] testified at length in the *Carter* case. The Government respectfully refers the Court to its brief in No. 636 for a summary and analysis of the evidence presented with respect to conditions in the coal industry.

In excluding the evidence of economic facts, the District Court held that it could not take testimony on the facts determining the constitutionality of *a statute,* as distinguished from an administrative order, but must rely on the findings of Congress, the evidence before Congress, and any facts of which the court could take judicial notice.[4] The court stated (R. 55–56):

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[2] Both parties expressly waived "any objection on account of the fact that said witnesses did not appear and testify in open court." (R. 122.)

[3] All but Fred S. McConnell (R. 185–188).

[4] The court distinguished the case of *Borden's Company* v. *Baldwin*, 293 U. S. 194, on the ground that the facts of the milk industry in New York City had been held to be "outside the sphere of judicial notice." (R. 55.)

Where a proceeding directly attacks an Act of Congress, as unconstitutional as contradistinguished from constitutional rights being invaded by the administration of the Act, it seems to me a Court would be treading on dangerous ground to attempt to go into a factual field in determining its constitutionality. The effect of evidence in such proceeding is, of course, a collateral attack upon the legislative inquiry, judgment and declaration (that is to impeach it).

The Congress has already investigated the facts as a basis for its action. If its findings may be impeached by the testimony of opinion witnesses, the Act might be found to be constitutional in one case and unconstitutional in another, depending on the testimony. As many conclusions might be reached as to constitutionality as there might be Judges, or upon such facts as ingenuity might suggest as matters of opinion or actual facts in evidence.

The Courts, so long as they recognize the doctrine of separation of Governmental powers, which is fundamental under our system, will not attempt to exercise the power of another branch. Judges will be careful to observe the ideal expressed by the letter and spirit of the Constitution to avoid encroachment upon other departments, and will be quick to sustain each in the exercise of its legitimate function, and so the rule prevails that every inquiry into the validity of a legislative act is approached with the presumption that the Congress observed the Consti-

> tution, and when the validity of an act depends upon the existence of certain facts, the legislative determination will be conclusive on the Courts, unless the contrary is shown by facts which the Court may judicially notice. If it cannot be made to appear that a law is in conflict with the Constitution by argument deduced from the language of the law itself, or from matters of which the Court can take judicial notice, then the Act must stand.

The court adverted to the numerous investigations by Congress into conditions in the coal industry and took the facts disclosed in these investigations "as well as all other facts of which it may take judicial notice" into consideration in passing upon the validity of the Act (R. 57). The opinion of the court describes conditions in the coal industry "based on these reports and matters of common knowledge." (*Ibid.*)

FINDINGS OF FACT

The court made findings of fact as to the allegations respecting the petitioners' businesses (R. 81–85), though refusing to make findings as to the economic condition of the industry. Most of the findings deal with the evidence supporting petitioners' right to equitable relief. The only facts found which are relevant to the substantive issues of the case are as follows: [4a]

> "5. All sales of coal made by each of the plaintiffs are f. o. b. railroad cars at the mine,

[4a] The excerpts from Findings 5 and 8 are quoted. Finding 6 is paraphrased.

with the exception of an inconsequential amount which is shipped to prepay stations, and all sales are made on from thirty to sixty days' time. (R. 81–82.)

6. Thirteen out of seventeen petitioners sell 5 per cent or less of their total production of coal intrastate.[5] One company sells 8.6 per cent intrastate, one 14 per cent, one 15 per cent, and one 25 per cent. "The remainder of their total production is sold to customers living in other states." (R. 82.)

"8. All of the men employed by each of the plaintiffs with the exception of a small office force, not exceeding in the case of any plaintiff six men, are engaged exclusively in the mining of coal, with no duties whatever to perform with reference to the sale of coal." (R. 82.)

THE DECREE

The final decree was entered November 14, 1935. The court held (R. 85) that the action was not premature, that Section 3224 was inapplicable because of extraordinary circumstances, and that the court had jurisdiction. The court further held that the Bituminous Coal Conservation Act was a constitutional exercise of the power of Congress to regulate interstate commerce, that it did not violate the Fifth or Tenth Amendments, and that it did not contain any improper delegation of legislative

[5] Two of these companies sell only 1 per cent intrastate, five 2 per cent, five 4 per cent, and one 5 per cent.

power. (R. 85–86.) The court held that 13½ per cent of the 15 per cent tax was a penalty to enforce a valid regulation of interstate commerce and, therefore, constitutional. (R. 86.) Accordingly, the bill was dismissed.

The court granted an injunction, pending final determination of the appeal, against the collection of the tax imposed by the Act, on condition that petitioners deposit with the clerk of the court 1½ per cent of the sales price of the coal sold by them during the period of the appeal.

## ARGUMENT

The Government respectfully refers the Court to its brief in No. 636 for the main argument supporting the constitutionality of the Bituminous Coal Conservation Act.[6] The argument in this brief will be confined to answering certain of the propositions in the brief for the petitioners and to pointing out certain facts with respect to the situation in Harlan County, Kentucky.

The Government is not contesting the right of the petitioners to maintain this action if the Act is unconstitutional, and accordingly does not answer the arguments on that issue (Pets. Br. pp. 22–29).

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[6] A copy of the brief in No. 636 has been served on counsel for the petitioners herein.

## I

### THE LABOR PROVISIONS OF THE ACT DO NOT REGULATE THE PRODUCTION OR MINING OF COAL, BUT ON THE CONTRARY ARE DIRECTED AT CONTROLLING COMPETITION IN THE SALE OF COAL IN INTERSTATE COMMERCE

Petitioners contend that the mining and production of coal are not and do not directly affect interstate commerce, and that since labor relations deal "exclusively with the production end of the bituminous coal industry" (Pets. Br. p. 29) they may not be regulated by Congress. For this proposition they cite and quote from a number of decisions holding that mining is not commerce and that the fact that the commodity produced is shipped in interstate commerce does not make its production a part thereof. *Hammer* v. *Dagenhart,* 247 U. S. 251; *United States* v. *E. C. Knight Co.,* 156 U. S. 1; *Kidd* v. *Pearson,* 128 U. S. 1; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344; *Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172.

It is undoubtedly true that labor relations in the coal industry are related to and concerned with the production stage of the industry. But the records in this case and in the *Carter* case make it clear that such relations, in so far as they determine labor costs, are dominantly connected, under the peculiar conditions of this industry, with the sale of coal, and with competition and distribution in

interstate commerce. "The cutting of wage rates" was found by the trial court in the *Carter* case to be "the predominant and most effective method of gaining competitive advantages in the bituminous coal industry" (No. 636, Fg. 182, R. 211).

The Bituminous Coal Conservation Act regulates labor relations only in so far as these constitute an integral and essential element of competition. The Act guarantees to employees the right of collective bargaining and looks to the adoption of standard wage scales in order to eliminate the unrestrained competition in wage cutting as a factor in determining which producers and which producing areas shall sell their coal in interstate commerce. The cases holding that Congress cannot regulate production have not been regarded by the Court as preventing federal regulation of certain aspects of the productive branch of industry which are at the same time intimately connected with sale and manufacture in interstate commerce. Thus, although Congress could not regulate a combination of manufacturers as such (*United States* v. *E. C. Knight Co., supra*), it could prohibit such a combination where it was proved to have the effect of monopolizing interstate commerce (*Standard Oil Co.* v. *United States,* 221 U. S. 1; see also *Standard Oil Co. (Indiana)* v. *United States,* 283 U. S. 163). Similarly, the strike in the *Coronado* case, although clearly related to production, was held to come within the federal power when it was shown to be

related to commerce and competition as well as to production. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

The Government's position is that labor relations in the bituminous coal industry are at the same time aspects of both the productive and the competitive branches of the industry and that, because of the latter, federal regulation of them is justified. Producers deny to their employees the right of collective bargaining and cut wage rates not because of anything having to do with the *mining* of coal, in the sense of the physical removal of the coal from the ground, but in order to gain an advantage over others in the *sale* of coal in commerce. Petitioners' own evidence shows that 96% of the sales from the Harlan County field are interstate in character.

## II

### CONGRESS MAY REGULATE INTRASTATE SALES OF COAL IN ORDER TO PREVENT DISCRIMINATION AGAINST SALES OF COAL IN INTERSTATE COMMERCE

The need for regulating intrastate prices up to a certain point in order to prevent injury to and discrimination against sales of coal in interstate commerce has been fully described in the Carter brief.

The Government wishes to make plain here, however, that its position is not what petitioners assume it to be, i e., that, because a producer makes inter-

state sales as well as intrastate sales, Congress may *for that reason* reulate the intrastate. Whether a particular producer makes both interstate and intrastate sales is immaterial if his intrastate sales directly affect interstate commerce. Intrastate sales may be regulated by Congress because, "if intrastate prices can be maintained on a lower basis than interstate prices, it would eliminate interstate coals from competition, the same as if an interstate freight rate were substantially higher at a given destination than the intrastate freight rate" (R. 176.) This Court has repeatedly upheld the exercise of the powers of Congress over intrastate rates in order to prevent discrimination against interstate shippers. *Ohio* v. *United States,* 292 U. S. 498; *Houston E. & W. Texas R. R.* v. *United States,* 234 U. S. 342.

## III

### THE PROVISIONS OF THE ACT ARE SEPARABLE

The Government's affirmative argument on this point appears in the Carter brief, pp. 146 ff., 275 ff.

## IV

### CONDITIONS IN HARLAN COUNTY ITSELF DEMONSTRATE WHAT PRODUCERS WILL DO IN ORDER TO GAIN A COMPETITIVE ADVANTAGE IN THE INTERSTATE SALE OF COAL

The petitioners constitute the greater part of the producers in Harlan County, Kentucky (R. 97). Harlan County is the only important producing

district in the Appalachian Area in which a majority of the producers are not parties to the Appalachian Agreement of 1935 [7] and are not bargaining collectively with their employees. (No. 636, R. 368.) It is notorious as the most important producing area in which the producers still, through the use of force and violence—through what has been recently characterized as "a reign of terror"—prevent the miners from exercising their right to collective bargaining.

A report to the Governor of Kentucky by a special commission appointed by him in 1935 to investigate conditions in Harlan County stated that:

> It is almost unbelievable that anywhere in a free and democratic Nation such as ours, conditions can be found as bad as they are in Harlan County. There exists a virtual reign of terror, financed in general by a group of coal-mine operators in collusion with certain public officials; the victims of this reign of terror are the coal miners and their families.
>
> * * * * *
>
> It appears that the principal cause of existing conditions in Harlan County is the desire of the mine operators to amass for themselves fortunes through the oppression

[7] The Appalachian Agreement (Defendant's Exhibit 21 in No. 636, R. 1029, 1039) lists the producers associations which have accepted the Agreement. The Harlan County Operators' Association is not listed, although there were individual signatories from Harlan County.

of their laborers, which they do through the sheriff's office.

This report is printed in full in the Appendix to this brief.[8] (*Infra,* pp. 18–28.)

These conditions are not referred to as justifying federal intervention in local affairs, but as showing the methods still resorted to by operators whose refusal to practice collective bargaining is obviously for the purpose of obtaining or retaining their advantage in competing with other producers in interstate commerce. It has been pointed out that in the case of Harlan County this competition is almost entirely interstate, and it is clear that what the Harlan County operators are seeking by the tactics they employ is to increase their interstate shipments at the expense of producers in fields where such degrading and un-American conditions do not prevail. Such tactics are not employed for any purely local purpose. Just as the purpose of the mine workers in their lawless conduct in the Coronado strike was to keep coal out of interstate commerce and competition, so here the purpose of the operators in engaging in conduct equally lawless is to force more of their coal into interstate commerce and competition.

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[8] The report may be found in the hearings before the House Ways and Means Committee on the present Act (pp. 636–640). See Hearings on H. R. 8479, 74th Cong., 1st Sess., Stabilization of Bituminous Coal Mining Industry.

## CONCLUSION

It is respectfully submitted that the judgment of the District Court should be affirmed.

STANLEY REED,
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JOHN DICKINSON,
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# APPENDIX

## REPORT OF GOVERNOR LAFFOON'S INVESTIGATION COMMISSION CONDEMNS OUTRAGES IN HARLAN COUNTY COAL FIELDS [1]

FRANKFORT, KY., *June 7, 1935.*

Hon. RUBY LAFFOON,
*Governor of Kentucky,*
*Frankfort, Ky.*

DEAR GOVERNOR LAFFOON: Your commission, appointed February 12, 1935, to investigate a state of unrest long existing in the southeastern Kentucky bituminous coal fields, desire to submit the following report:

The commission met at Frankfort, Ky., and organized on February 15, 1935, the following members being present: Adj. Gen. Henry H. Denhardt, chairman, Rev. Adelphus Gilliam, Hon. Oren Coin, Hon. Hugh B. Gregory.

The commission conducted hearings at Frankfort on March 7, 8, 9, and 11. On these dates, the United Mine Workers of America presented their testimony in chief. On March 25, 26, 27, and 28, the coal operators of Harlan County took their evidence. Further evidence offered by both sides was heard May 6. On May 23, 24, and 25, the commission visited the coal mines and camps of Letcher, Harlan, and Bell Counties. Certain evidence was offered by both sides during this visit to these counties. The commission also interviewed a num-

[1] As printed in Hearings on H. R. 8479, 74th Cong., 1st Sess., Stabilization of Bituminous Coal Mining Industry, pp. 636–640.

ber of miners, mining operators, certain officials, and many other citizens. In all, several thousand pages of evidence was taken and the investigation was full and thorough.

Hon. A. Floyd Byrd of Lexington, Ky., represented the United Mine Workers of America during the various hearings, while Hon. J. B. Snyder, Hon. William Sampson, Hon. B. B. Snyder, and Hon. George C. Ward, all of Harlan County, represented the coal operators.

The representatives of both sides to the controversy are honorable men of the highest type, and their treatment of the commission was all that could be expected. On our visit to the coal fields, we could not have received more courteous, more kindly, or finer treatment anywhere than was given us by the leaders of both sides. It is hard for the members of your commission to understand why, with such splendid citizens heading and controlling their organizations, that conditions in Harlan County cannot be amicably settled to the satisfaction of both sides concerned. However, your commission regrets to have to report that conditions of the most serious nature exist in Harlan County, which, if permitted to go on, will continue to reflect on the good name not only of Harlan County, but of Kentucky as well.

It is almost unbelievable that anywhere in a free and democratic Nation such as ours, conditions can be found as bad as they are in Harlan County. There exists a virtual reign of terror, financed in general by a group of coal-mine operators in collusion with certain public officials; the victims of this reign of terror are the coal miners and their families.

We found conditions in Bell and Letcher Counties entirely the reverse of those in Harlan. We believe that these better conditions existing in the first two counties are due to a better understanding between employers and employee. In these counties, freedom of speech and the right to peaceably assemble are recognized. There is no oppression from above; there is helpful cooperation and understanding between the operators and the miners. However, it is true that these outrageous conditions complained of in Harlan County do not exist in all the mines in that county. There are some operators in Harlan County who do not condone the practices indulged in by the Harlan County Coal Operators' Association. These operators who do not endorse the methods of the Harlan County Coal Operators' Association are fair and just to their men and treat them as human beings, yet while affording fair and decent treatment to their employees, these operators are operating their mines apparently as successfully as are other operators where ruthless oppression is the rule. The commission wishes to especially express its commendation of these operators who have the courage to operate their mines in a righteous manner when surrounded by so many operations where unjust and un-American methods are practiced.

In Harlan County we found a monsterlike reign of oppression, whose tentacles reached into the very foundation of the social structure and even into the church of God. Ministers of the Gospel of the very highest standing complained to us of these conditions. Reprisals on the part of bankers, coal operators, and others of the wealthier class were prac-

ticed against churches whose ministers had the courage to criticize from the pulpit, the intolerable state of conditions that they of their knowledge know to exist in Harlan County. The miners themselves and their families generally, hesitated to discuss their affairs with the commission. Free speech and the right to peaceable assemblage is scarcely tolerated. Those who attend meetings or voice any sentiment favorable to organized labor are promptly discharged and evicted from their homes. Many are beaten and mistreated in most unjust and un-American methods by some operators using certain so-called "peace officers" to carry out their desires.

There is no doubt that Theodore Middleton, sheriff of Harlan County, is in league with the operators and is using many of his deputies to carry out his purposes. This sheriff was elected by a big majority given him largely by the laboring people. It is not denied that the operators had a candidate opposing him. Several days prior to his election, the sheriff and others captured a ballot box which had already been stuffed. This box contained some 650 ballots already marked against him, and upon his plea that National Guard troops be furnished to help "unstuff" many other of the stuffed ballot boxes in the county, which was done, he was elected by the people in one of the few fair elections ever held in the county. He had been chief of police of Harlan and while so acting as chief of police, he always permitted public speakings on the union's questions. He even roped off the streets for this purpose. He promised, if elected, that he would continue giving to the people

the right of free speech and of free and lawful assemblage. So much did he oppose the ruthless, lawless methods of certain operators in having ballot boxes stuffed, that he was present at least when one man was killed and others wounded over this lawless stuffing of a ballot box and when the National Guard arrived, he and some of his henchmen were engaged in an attack on a commissary in which dynamite, rifle, and other gun fire were used with serious effect to some of his misguided and trusting followers. The National Guard arrived in time to stop this battle and no doubt saved his life as well as the lives of others with him. Yet after all this, he has proven faithless to the trust which the people reposed in him.

There are some faithful officials in Harlan County who are making an honest effort to do their duty. Your commission would especially commend and congratulate the circuit judge, the Honorable James M. Gilbert, and the county attorney, the Honorable Elom Middleton, for courage and fidelity to duty under very trying circumstances.

In one 3-room building in the town of Cumberland, we found huddled together, 11 children and 4 adults, forced from their company-owned homes because they dared to oppose the will of the operators. In this same building preparations were being made to receive another family of 7 children and their parents who likewise had been forced to leave their home because the father had expressed himself favorably to the labor organization.

The proof shows that the homes of union miners and organizers were dynamited and fired into, that the United States flag was defiled in the presence

of, and with the consent of, peace officers who were sworn to uphold the principles for which it stands. These flags were on cars that were being used for organization purposes by the United Mine Workers. A deputy sheriff from an adjoining county entering Harlan County to make an arrest was disarmed, his gun was broken up with a sledge hammer at the direction of the sheriff, and he, himself, was ordered to leave the county by Sheriff Middleton in person.

The Honorable Charles Barnes of Cincinnati and New York, chairman of the National Recovery Administration Bituminous Coal Labor Board for District No. 1 South, told your commission under oath, that his board had been unable to obtain the least semblance of cooperation from most of the large Harlan County coal operators. He stated that the provisions of the National Recovery Administration had been ignored by almost every mine operator in the county. He further stated that the number of complaints of violations of the National Recovery Administration in Harlan County far exceeded the number of complaints from any other county under the jurisdiction of the two boards of which he was chairman. Harlan County, he said, "is the 'sore spot' in the entire district", which he testified included a number of States. Mr. Barnes testified that the charges against the Harlan County operators consist of discrimination against the men, intimidation, lack of check-weighmen; the discharging of a number of men for no other reason than for union activities. Violation of code hours and wages were numerous and general. He stated that every mine in the Har-

lan district, except those in contractual relations with the union, violated the code regulations.

Mr. Barnes testified that he had received 128 sworn affidavits supporting complaints against different mines in Harlan County concerning the beating-up of men by deputy sheriffs, and also for other causes. He testified that a number of operators were summoned as witnesses before the board of which Mr. Barnes was chairman, but that only one operator showed any respect whatsoever for the board. Sheriff Middleton was summoned to appear before the board, but the sheriff ignored the summons. Middleton told Mr. Barnes later that: "The operators are not going to have anybody tell them how to run their business", and also that he would not allow labor agitators to stir up matters. Middleton stated to Mr. Barnes that his (the sheriff's) office was going to aid the operators in their endeavors to keep the United Mine Workers of America out of Harlan.

Mr. Barnes testified that, "There isn't a county in the whole United States, that is, south of Indiana, and east of Indiana, where I have not had better cooperation." He testified that Mingo County, W. Va., was in good shape. Mr. Barnes further stated, "You will have to have a new sheriff. You can't help but have a new sheriff. I don't think you can do it (remedy conditions) any other way. He (the sheriff) is tied in with a gang of some of the toughest kind of deputies. He has also gotten tied in with some honorable gentlemen. The only objection I have is that men are not free to meet in Harlan County—not free to assemble and become anything they want to become—United Mine Workers of America, company union or any-

thing that they want, no religion, no lodge, no organization. They are not free. The minute they attempt to assemble, on the slightest suspicion that the United Mine Workers of America have something to do with it that ends it. He (Middleton) is tied to honorable men above and to a lot of other kind of men below and between the two, he cannot escape."

The evidence shows that the miners' wages are cut for additional school costs such as longer terms, additional teachers, etc., but it also appears that the operators have much to say as to the selection of the teachers, who naturally are friendly. The men are also out for the expense of company doctors. Of course, the companies select these, who are also friendly.

The only newspaper in the county is owned by a gentleman who is the enthusiastic friend and supporter of the operators. Even the choice of banks for their savings and of undertaker for the burials of their men are handled to the satisfaction of the operators.

Many cities and towns of Harlan County are not incorporated as in other counties, because the operators prefer to maintain their own government rather than give their men the right to participate and elect their officials, police officers, etc., as they do in Jenkins, Letcher County, and in many other places where the rights of the people are respected. Thus, it will be seen that in Harlan County, from the cradle to the grave, the things most vitally affecting the lives of the people are under the friendly control and supervision of the operators.

On the other hand, the mine operators, or rather those who appeared before the commission as their

representatives, accuse the United Mine Workers of America of having perpetrated outrages against nonunion miners, of having imported into Harlan County certain individuals for the purpose of stirring up dissatisfaction and crippling the coal industry; however, when quite a number of these so-called "outsiders" were arrested in Cumberland and taken to jail and kept there for several days without being given an opportunity to make bond, and all without rhyme, right, or reason, except that they belonged to the union, and without any warrants being issued against them, not a single one of them on this occasion or any other, was found to be armed. Later warrants were sworn out by the sheriff himself and all but one of the warrants were dismissed without trial.

Your commission fully recognized the fact that the southeastern Kentucky bituminous-coal fields are among the most extensive and the wealthiest in the world and that the operators who have heavily invested their capital in this field have a right to lawful protection and a fair profit on their investment. It also recognizes the fact that the United Mine Workers of America or any similar organization has the constitutional right so long as it remains in the bounds of legal propriety and reason, to organize, to speak and to conduct meetings wherever and whenever it may desire.

It appears that the principal cause of existing conditions in Harlan County is the desire of the mine operators to amass for themselves fortunes through the oppression of their laborers, which they do through the sheriff's office. Mine owners have a right to have their property properly protected, but these mine guards should not be made

use of away from the property of their employers. They should not be gunmen or ex-convicts; they should not be organized into "flying squadrons" to terrorize and intimidate people anywhere in the county wherever the Sheriff may direct.

Your commission believes that before conditions can be bettered in Harlan County, that it is absolutely essential that the operators and miners come to a better understanding, one with another, and that the operators come to fully recognize the fact that the miners they employ are human beings with equal rights under the law with themselves, and that their employees are not mere tools to be used by them as they may see fit. The present system of deputized mine guards and one-sided administration of the law must be abolished. The law should be enforced as strictly against the operators as it is now being enforced only against the miners. Free and honest elections are also a necessity, and the "stuffing" of ballot boxes, the voting of ballots in the names of discharged employees, in the names of men that are dead or else never existed, these ballots being voted days in advance of elections, should be stopped. All of this is being done now, and in their prime when the list of names ran out these election experts even voted trees, flowers, the beasts of the field and the fowls of the air.

The commission recommends to you that Sheriff Middleton be removed from office. This may accomplish little, as some other sheriff will likely be appointed who will indulge in the same methods, but at any rate, it would be "food for thought" for future sheriffs.

It is further recommended that a commission similar to this be appointed and authorized to fully

investigate any further outrages committed or permitted by sheriffs, deputies, other officials, or persons.

It is also recommended that State police officers be used to enforce the law and give proper protection to the people, in the event the local officials do not see fit to "clean house" themselves. In fact, one mine operator, who was attempting to give his men a square deal, requested the use of the State police if he could not keep his own deputies. This man's house had been dynamited, presumably by men who did not like this method of fair dealing, and who had been notified by Sheriff Middleton that he was, in the future, going to furnish only deputies of his (the sheriff's) own choosing.

In conclusion, your commission desires to report that after mature and careful deliberation, that its members unanimously agree that charges made in writing against the Harlan Coal Operators and filed with the Commission by Mr. William Turnblazer, president of district no. 19, and Sam Caddy, president of district no. 30, of United Mine Workers of America, have been successfully substantiated by competent evidence, except that it was not shown that the number of deputy sheriffs and other peace officers in Harlan County was as great as 300.

Respectfully submitted.

HENRY H. DENHARDT, *Chairman,*
ADOLPHUS GILLIAM,
OREN COIN,
HUGH S. GREGORY,
*Investigation Commission.*

U. S. GOVERNMENT PRINTING OFFICE: 1936